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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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*In re Wells Fargo Mortgage Modification  
Litigation*

Case No. 3:24-cv-01358-MMC

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**WELLS FARGO BANK, N.A.'S RESPONSE  
TO BARBARA PRADO'S MOTION TO  
INTERVENE**

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Judge: Hon. Maxine M. Chesney  
Date: December 13, 2024  
Time: 9:00 a.m.  
Place: San Francisco Courthouse  
Courtroom 7 – 19th Floor  
450 Golden Gate Avenue, San  
Francisco, CA 94102

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1       Barbara Prado (“Prado”) asks the Court to let her intervene in this action, to sever the claims of  
 2 seven named plaintiffs, and to replace their chosen lawyers with her lawyers, who she says will represent  
 3 a putative class of borrowers “who received mortgage modifications and did not lose their homes.” ECF  
 4 No. 67-1 at 7 (“Mot.”). This proposal is untenable and should be denied. Prado predicates the need for  
 5 intervention, severance, and more interim counsel on a supposed “inherent conflict of interest” between  
 6 this action’s putative class and those “who received mortgage modifications and did not lose their homes.”  
 7 *Id.* In so arguing, Prado apparently did not review her own putative class definition, which is not so  
 8 limited, but instead includes “all Persons . . . who received at least one letter from Wells Fargo alerting  
 9 them that an error occurred relating to their mortgage loan and/or modification[.]” *Prado v. Wells Fargo*  
 10 & Co., No. 3:24-cv-05105-MMC (“*Prado*”), ECF No. 1 at 11, 12 (“*Prado Compl.*”). But in any event,  
 11 there is no conflict between Prado, whose home was not foreclosed, and putative class members, whose  
 12 homes were foreclosed, because they all seek damages resulting from the same alleged conduct.  
 13 Consolidation, not intervention and severance, is the appropriate course here.

14       Nor is there any reason to appoint more and separate interim counsel. Wells Fargo does not opine  
 15 on the qualifications or reputations of Prado’s proposed counsel team. However, the appointment of  
 16 interim class counsel must promote efficiency and economy. Prado’s motion does not address those  
 17 requirements, but instead focuses on the non-existent conflict of interest. Prado cannot demonstrate why  
 18 anything other than the appointment of a single interim counsel would increase efficiency or benefit the  
 19 putative class.

20       Prado’s motion should be denied.

## 21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22       There are three relevant putative class action lawsuits: this action, *Prado*, and *Flores v. Wells Fargo*  
 23 *Bank, N.A.*,<sup>1</sup> pending in the Northern District of Florida.

### 24       A. This Action

25       *Curry v. Wells Fargo Bank, N.A.* and *Beloff v. Wells Fargo Bank, N.A.*<sup>2</sup> were filed on March 7 and  
 26 12, 2024, respectively. ECF No. 1; *Beloff*, ECF No 1. On April 3, 2023, Marc E. Dann of The Dann Law

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27       <sup>1</sup> No. 4:24-cv-00359-RH-MAF (N.D. Fla.) (“*Flores*”).

28       <sup>2</sup> No. 3:24-cv-01522 (“*Beloff*”).

1 Firm and Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C. were appointed interim co-lead  
 2 class counsel in the *Curry* and *Beloff* actions. ECF No. 27; *Beloff*, ECF No. 12. *Curry* and *Beloff* were  
 3 consolidated and recaptioned *In re Wells Fargo Mortgage Modification Litigation* on April 23, 2024 (ECF  
 4 No. 34), and Plaintiffs filed the Consolidated Class Action Complaint (“CAC”) on July 8, 2024, over a  
 5 month before Prado filed her complaint. ECF No. 41.

6 The CAC alleges that Plaintiffs and the putative class members were injured when they sought  
 7 loan modifications from Wells Fargo and their applications were denied or approved with erroneous terms.  
 8 CAC ¶¶ 116, 126, 135, 144, 156, 168, 177, 185, 195, 202, 211. According to Plaintiffs, those errors were  
 9 caused by faulty modification software, and they resulted in the loss of some Plaintiffs’ properties, either  
 10 by sale (voluntary or short sale), deed-in-lieu of foreclosure, or foreclosure. *Id.* ¶¶ 113, 118, 124, 133,  
 11 137, 142, 154, 166, 193, 209. Other Plaintiffs remain in their homes and are making their modified  
 12 mortgage payments. *Id.* ¶¶ 179, 183, 204.

13 Plaintiffs seek to represent a nationwide class defined as:

14 All persons, as identified by Defendant constituting mortgagors and for which Defendant  
 15 was the mortgagee or servicer, in the United States who since January 1, 2008 (i) qualified  
 16 for a home loan modification, (ii) either were denied a temporary or permanent loan  
 17 modification by Defendant due to a calculation error in Defendant’s loan modification  
 18 decision process, or received a temporary or permanent loan modification by Defendant  
 19 based on inaccurate calculations due to a calculation error in Defendant’s loan modification  
 20 decision process, and (iii) were sent an apology letter from Defendant stating that an error  
 21 may have occurred related to their loan modification.

22 *Id.* ¶ 214. They bring nationwide claims for breach of contract, intentional infliction of emotional distress,  
 23 negligence, and violation of the California Unfair Competition Law. *Id.* ¶¶ 234–274, 291–301. The  
 24 California-based plaintiffs also seek to represent a California subclass to pursue fraudulent concealment  
 25 claims and claims under the California Homeowner Bill of Rights, while other plaintiffs seek to represent  
 26 subclasses of borrowers from their respective states (Illinois, Pennsylvania, North Carolina, Washington,  
 27 Washington, D.C., and Virginia) to bring claims under various state unfair trade practices and mortgage  
 28 lending statutes. *Id.* ¶¶ 214–22, 303–11, 313–21, 323–33, 335–45, 347–57, 359–69.

1       Wells Fargo moved to dismiss the CAC on September 20, 2024. ECF No. 56. The Court vacated  
 2 the hearing on that motion pending resolution of the instant motion and Wells Fargo's motion to  
 3 consolidate *Prado* with this action. ECF No. 68.

4       **B.     The *Prado* Action**

5       Prado filed her complaint on August 13, 2024. *Prado*, ECF No. 1. As she admits, her claims  
 6 depend on the same allegations at issue here: namely, that Wells Fargo made errors in connection with her  
 7 loan modification request. Mot. at 6 ("[T]he factual allegations for these newly added plaintiffs' claims  
 8 are compatible with the factual allegations in *Prado*[.]"). Prado purports to bring nationwide claims for  
 9 unjust enrichment and conversion (*Prado* Compl. ¶¶ 115–18, 120–24), and although she now argues that  
 10 there is a meaningful difference between her putative class and Plaintiffs' putative class, that is simply not  
 11 true. Prado's putative class is broadly defined to include "all Persons" who received letters from Wells  
 12 Fargo regarding "error[s] . . . relating to their mortgage loan and/or modification"—regardless of outcome  
 13 (i.e., approved, denied, foreclosed, etc.)—and is thus wholly subsumed by the putative class in this  
 14 first--filed action:

15       All persons within the United States who received at least one letter from Wells Fargo  
 16 alerting them that an error occurred relating to their mortgage loan and/or modification and  
 17 enclosing a payment to compensate such customer such error within the statutory time  
 period for claims brought in this complaint.

18       *Id.* ¶ 68. Prado also seeks to represent a California subclass to pursue claims under the California Unfair  
 19 Competition Law and California Penal Code § 496(c). *Id.* ¶¶ 69, 81–102, 104–13.

20       By order dated September 26, 2024, this Court deemed *Prado* related to this action pursuant to  
 21 Local Rule 3-12(a), meaning that the cases "concern substantially the same parties, property, transaction,  
 22 or event." ECF No. 64; L.R. 3-12(a). Wells Fargo moved to consolidate the *Prado* action with this action  
 23 on October 15, 2024. ECF No. 66. The next day, Prado filed her motion to intervene and sever, asking  
 24 the Court to sever the claims of seven named Plaintiffs in this case, consolidate their claims with hers, and  
 25 appoint her lawyers as their lawyers and as interim lead counsel for a new putative class that includes  
 26 borrowers "who received mortgage modifications and did not lose their homes." Mot. at 7.  
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1           **C. The *Flores* Action**

2           Denise Georgette Flores filed her complaint in the Northern District of Florida on September 6,  
 3 2024. *Flores*, ECF No. 1. Like Plaintiffs here and Prado, Flores alleges that Wells Fargo made mistakes  
 4 in connection with her loan modification request because of faulty automation software. *See id.* Plaintiff  
 5 Flores seeks to represent a nationwide class defined as:

6           All persons within the United States who applied to Wells Fargo Bank, N.A. for a mortgage  
 7 loan modification, were denied a modification by Wells Fargo due to an automation error,  
 8 and lost their home to foreclosure by Wells Fargo.

9           *Id.* ¶ 33.

10          On October 28, 2024, Wells Fargo filed an Unopposed Motion to Stay the *Flores* action pending  
 11 resolution of the instant motion and Wells Fargo’s motion to consolidate *Prado* with this action. *Flores*,  
 12 ECF No. 13. Flores’s lawyers have indicated that the outcome of the instant motion may impact whether  
 13 they agree it is appropriate to transfer the *Flores* action to this Court. In the meantime, and in any event,  
 14 Wells Fargo believes *Flores* should be dismissed, stayed or transferred under the first-to-file rule. It filed  
 15 a motion to that effect in the Northern District of Florida on November 2, 2024. *See Flores*, ECF No. 14.

16           **II. ARGUMENT**

17           **A. Consolidation—Not Intervention and Severance—Is Warranted Here.**

18          Prado’s basis for intervening in this first-filed action, and for severing the claims of seven named  
 19 plaintiffs and replacing their counsel with hers, is a supposed “inherent conflict of interest” between the  
 20 putative classes. Mot. at 7, 13. As demonstrated above, however, Prado’s own complaint proves that this  
 21 supposed “conflict” does not exist. Her putative class, like Plaintiffs’ putative class, includes all  
 22 borrowers—whether foreclosed or not—who received a letter from Wells Fargo regarding potential errors  
 23 in connection with their loan modification applications. And in any event, there is no conflict between  
 24 foreclosed and non-foreclosed borrowers, because both groups seek damages resulting from the same  
 25 alleged conduct. And finally, Prado admits that her factual allegations are “compatible” with those at issue  
 26 here. *Id.* at 6. The interests of the putative classes are aligned, and Prado cannot meet the requirements  
 27 of Rule 24.

1           **1. Prado Is Not Entitled to Intervene as of Right.**

2           Courts will grant intervention as of right under Rule 24(a)(1) when (1) the motion is timely; (2) the  
 3 applicant asserts “an interest relating to the property or transaction which is the subject of the action”;  
 4 (3) the disposition may impair the applicant’s ability to protect her interest; and (4) “the applicant’s interest  
 5 is not adequately represented by the existing parties.” *McGough v. Covington Techs. Co.*, 967 F.2d 1391,  
 6 1394 (9th Cir. 1992). “Failure to satisfy any one of the requirements is fatal to the application, and [the  
 7 court] need not reach the remaining elements if one of the elements is not satisfied.” *Perry v. Proposition*  
 8 *Off. Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). Because Prado fails at prongs (3) and (4), her motion  
 9 should be denied.

10           **a. Prado’s Interests Will Not Be Impaired Absent Intervention.**

11           First, Prado cannot show that her interests may be impaired absent intervention. In support of this  
 12 factor, Prado first invokes the non-existent conflict of interest between her putative class and Plaintiffs’  
 13 putative class. Mot. at 13. But according to Prado’s own allegations, she (1) was given a permanent loan  
 14 modification with erroneous terms; and (2) received letters stating “that an error may have occurred  
 15 relating to your approval [sic] and finalized loan modification.” *Prado Compl.* ¶¶ 39, 52, 59–66. She  
 16 thus falls within Plaintiffs’ putative class, which includes (1) “[a]ll Persons”; (2) who “received a  
 17 permanent loan modification . . . based on inaccurate calculations”; and (3) “were sent an ‘apology letter’  
 18 from [Wells Fargo] stating that an error may have occurred related to their loan modification.” CAC ¶  
 19 214. And because Prado “is a member of the proposed class in this action[,]” her “interests are in no way  
 20 impaired or impeded if she is not permitted to intervene.” *Allen v. Hyland’s Inc.*, 2012 WL 12887827,  
 21 at \*2 (C.D. Cal. Aug. 28, 2012) (denying intervention as of right). Indeed, “Rule 23 is specifically  
 22 designed to avoid this kind of intervention by a class member.” *Id.* at \*3 (citing *Am. Pipe and Constr. Co.*  
 23 v. *Utah*, 414 U.S. 538, 551 (1974)).

24           In any event, there would be no conflict even if Prado’s description of her putative class were  
 25 correct (and it is not). Prado admits the factual allegations here “are compatible” with her factual  
 26 allegations, and her claims are based on the same underlying conduct at issue here. Mot. at 6. Accordingly,  
 27 whether or not a borrower was foreclosed makes no practical difference at this stage. Moreover, doubts  
 28 about whether Plaintiffs’ putative class might ultimately be certified, or claims that certain groups may

1 seek different types of damages, do not create a conflict of interest before the certification stage. Instead,  
 2 “[a] conflict must be manifest at the time of certification rather than dependent on some future event or  
 3 turn in the litigation that might never occur.” 1 William B. Rubenstein, Newberg and Rubenstein on Class  
 4 Actions § 3:58 (6th ed. 2023). Accordingly, “simply pointing to some future events that might never  
 5 occur, as [Prado] does here, is not enough to show a manifest conflict.” *Fine v. Kan. City Life Ins. Co.*,  
 6 2023 WL 7393027, at \*5 (C.D. Cal. Nov. 6, 2023).

7 Finally, Prado argues that consolidation would deprive her of “counsel of her own choosing,” Mot.  
 8 at 13. That argument is quite curious, given that Prado urges the Court to sever the claims of seven named  
 9 plaintiffs and appoint her lawyers as their lawyers, thereby depriving them of “counsel of their own  
 10 choosing.” But she notably “makes no argument as to why Plaintiffs’ choice of counsel deserves any less  
 11 respect than [her] own[.]” *Espinosa v. Hyundai Motor Am.*, 2012 WL 13226634, at \*7 (C.D. Cal. Dec. 28,  
 12 2012).

13 Prado has not shown that her interests will be impaired absent intervention.

#### 14                   **b. Prado Cannot Establish Inadequate Representation.**

15 Nor can Prado establish inadequate representation. Courts consider three factors in determining  
 16 the adequacy of representation:

17 (1) whether the interest of a present party is such that it will undoubtedly make all of a  
 18 proposed intervenor’s arguments; (2) whether the present party is capable and willing to  
 19 make such arguments; and (3) whether a proposed intervenor would offer any necessary  
 elements to the proceeding that other parties would neglect.

20 *Callahan v. Brookdale Senior Living Cmtys., Inc.*, 42 F.4th 1013, 1020 (9th Cir. 2022) (quotations and  
 21 citation omitted). Of these factors, “the most important” is “how the interest [of the movant] compares  
 22 with the interests of the existing parties.” *Forsyth v. HP Inc.*, 2020 WL 71379, at \*3 (N.D. Cal. Jan. 7,  
 23 2020) (quotations and citation omitted). When the moving party and the existing parties “have the same  
 24 ultimate objective, a presumption of adequacy of representation arises.” *Id.* (quotations and citation  
 25 omitted). Moreover, when the movant “has an identical interest to the present party,” the movant must  
 26 make “a compelling showing to show inadequate representation.” *Id.* (quotations and citation omitted).

27 Here, Prado and Plaintiffs “have the same ultimate objective”: pursing claims based upon Wells  
 28 Fargo’s use of allegedly faulty loan modification software, which may have impacted the outcome of some

1 modification applications. While Prado argues that her case is different because “the only overlapping  
 2 claim between the cases is the sole California UCL claim,” that is irrelevant. As this Court has explained,  
 3 “[t]he standard is not whether the intervenor and present party share identical claims.” *Forsyth*, 2020 WL  
 4 71379, at \*4. Instead, “district courts should look at the ultimate purpose of the litigation, *i.e.*, what goals  
 5 is the present party trying to achieve by litigating the action.” *Id.* Here, Prado and Plaintiffs’ end goal is  
 6 the same: compensation for alleged errors made in connection with their loan modification applications.  
 7 Accordingly, Prado “must make a compelling showing to demonstrate inadequate representation.”  
 8 *Callahan*, 42 F.4th at 1021. No such showing is or could be made here. Given the overlap between the  
 9 cases, Prado’s and Plaintiffs’ interests are aligned. *Forsyth*, 2020 WL 71379, at \*4 (denying intervention  
 10 because the movant was a member of the putative class he purported to challenge); *see also Opperman v.*  
 11 *PATH, Inc.*, 2015 WL 12941889, at \*2 (N.D. Cal. Jan. 5, 2015) (denying intervention as of right because  
 12 movant’s claims were “highly duplicative of those already alleged on behalf of the class” and “existing  
 13 parties adequately represent his interest”) (quotations and citation omitted).

14 Prado’s disagreements with Plaintiffs’ counsel’s litigation strategy—including whether Plaintiffs’  
 15 putative class is “intrinsically unmanageable,” whether it will ultimately be certified or settled, and  
 16 whether damages can be calculated on a classwide basis<sup>3</sup>—do not move the needle. “Differences in  
 17 litigation strategy are not enough to justify intervention as a matter of right.” *Forsyth*, 2020 WL 71379,  
 18 at \*5 (quotations and citation omitted); *see also Callahan*, 42 F.4th at 1021 (affirming denial of  
 19 intervention of right when movant’s arguments amounted to “a disagreement over litigation strategy or  
 20 legal tactics”). As this Court has explained, “[e]vidence that the proposed intervenor and the existing  
 21 parties have different views of the facts, the applicable law, or the likelihood of success of a particular  
 22 litigation strategy is insufficient to rebut the presumption of adequate representation.” *Forsyth*, 2020 WL  
 23 71379, at \*5 (quotations and citation omitted); *see also Russell v. Kohl’s Dep’t Stores*, 2016 WL 4414848,  
 24 at \*3 (C.D. Cal. Apr. 12, 2016) (denying intervention as of right and rejecting argument that plaintiffs  
 25 were inadequate because their proposed class was too broad to be certified). Prado cannot show  
 26 inadequate representation.

27  
 28<sup>3</sup> Mot. at 6–7, 11.

1           The motion to intervene as of right should be denied.

2           **2.       The Court Should Deny Prado's Request for Permissive Intervention.**

3           Federal Rule of Civil Procedure 24(b) provides for permissive intervention. “A court may grant  
 4 permissive intervention where the applicant for intervention shows (1) independent grounds for  
 5 jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have  
 6 a question of law or a question of fact in common.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825,  
 7 839 (9th Cir. 1996) (citation omitted). If these factors are met, “the court must consider whether  
 8 intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ.  
 9 P. 24(b)(3). The court may also consider other factors, including the nature and extent of the intervenors’  
 10 interest and whether the intervenors’ interests are adequately represented by other parties.” *Perry*, 587  
 11 F.3d at 95. Ultimately, whether to grant permissive intervention is in the court’s sole discretion. *See S.*  
 12 *Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002).

13           Prado invokes the “inherent conflict of interest” as the lone basis for permissive intervention. Mot.  
 14 at 15. As shown above, however, there is no conflict of interest between class members who were  
 15 foreclosed and those who were not, because their claims are based on the same underlying conduct: alleged  
 16 errors made during the loan modification process. Accordingly, Prado’s interests are aligned with those  
 17 of Plaintiffs, and she is adequately represented here. Prado also does address whether intervention and  
 18 severance would prejudice Wells Fargo’s rights, perhaps because she has no good answers. Indeed,  
 19 Prado’s proposal would subject Wells Fargo to needlessly duplicative discovery, motions practice and  
 20 discovery, and class certification proceedings. Permissive intervention should be denied. *See Donnelly v.*  
 21 *Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (permissive intervention is not proper where it “would only  
 22 serve to undermine the efficiency of the litigation process”) (quotations omitted); *Callahan*, 42 F.4th at  
 23 1022 (affirming denial of permissive intervention because, *inter alia*, “permitting intervention would not  
 24 contribute to the factual development of issues in the case”).

25           **B.       The Court Should Deny the Motion to Sever.**

26           The Court should also deny Prado’s motion to sever the claims of seven named plaintiffs, which  
 27 would also result in duplicative discovery, motions practice, and class certification proceedings. *See*

1 *Moulvi v. Safety Holdings, Inc.*, 2021 WL 4494191, at \*11 (E.D. Va. Sept. 30, 2021) (denying motion to  
 2 sever, reasoning that “[s]hould this Court grant Defendants’ motions to sever, ‘[s]everance would . . .  
 3 require duplicative presentation of at least some common factual and legal issues in separate judicial  
 4 forums’” and the parties “may be forced to contend with inconsistent rulings on important issues, such as  
 5 class certification or discovery disputes, among separate courts”) (citations omitted). Prado has not cited  
 6 a single case where the court severed the claims of putative class members, much less at such an early  
 7 stage of the litigation.<sup>4</sup> In fact, none of her cases deal with class actions at all. In *Hard Drive Products,*  
 8 *Inc. v. Does 1-188*, 809 F. Supp. 2d 1150, 1158–65 (N.D. Cal. 2011), and *Maverick Entertainment Group,*  
 9 *Inc. v. Doe*, 810 F. Supp. 2d 1, 10–17 (D.D.C. 2011), the courts considered whether to sever the plaintiffs’  
 10 claims against hundreds of separate “Doe” (i.e., unknown) defendants accused of copyright infringement.  
 11 And *Investors Research Co. v. United States District Court*, 877 F.2d 777 (9th Cir. 1989), does not address  
 12 severance at all, but instead—as demonstrated by Prado’s own quotation—says that “[t]he district court  
 13 has broad discretion under this rule **to consolidate cases pending in the same district.**” Mot. at 16  
 14 (emphasis added). That is precisely what the Court should do here.

15 Judge Donato’s recent order in *In re Wells Fargo Mortgage Discrimination Litigation*,  
 16 No. 3:22-cv-00990 (ECF No. 49, Jan. 18, 2023), granting consolidation and ordering the plaintiffs to file  
 17 a single, consolidated complaint, is instructive. There, the plaintiffs, who alleged discrimination in  
 18 connection with their mortgage loan applications, sought to file two complaints, one on behalf of Black  
 19 loan applicants and another on behalf of non-Black minority applicants, based on the argument that Black  
 20 applicants suffered more extensive harm than other applicants. In denying the request, Judge Donato  
 21 explained:

22 The cases will be consolidated into a single action with one amended complaint. The  
 23 reasons for this are straightforward. All of the complaints allege the same theory, namely  
 24 that Wells Fargo discriminated against non-white customers with respect to residential  
 25 mortgages and refinances. It may be, as plaintiffs suggest, that some plaintiffs experienced  
 26 more discriminatory conduct and impacts than others, but that is a difference of degree and

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27 <sup>4</sup> Indeed, these issues are better suited for resolution at the class certification stage. See, e.g., *Fraihat v.*  
 28 *U.S. Immigr. & Customs Enf’t*, 2020 WL 2759848, at \*13 (C.D. Cal. Apr. 15, 2020) (“On balance, the  
 Rule 21 factors weigh against severance. Defendants’ arguments are better suited for the class certification  
 stage, and the Court cannot agree that joinder is so defective as to warrant severance at this juncture.”).

1 not substance. ... Differences among plaintiffs in treatment and impact can be readily  
 2 managed in a variety of ways at class certification and other proceedings.

3 No. 3:22-cv-00990, ECF No. 49 at 2.

4 The same is true here. Prado's and Plaintiffs' claims are based on the same theory—that Wells  
 5 Fargo's use of allegedly faulty software led to mistakes on their loan modification applications—but Prado  
 6 nonetheless justifies her request for separate actions and separate counsel on the supposition that some  
 7 borrowers suffered more harm than others. But, as shown above, that is not grounds for the Court to sever  
 8 the claims of seven named plaintiffs and have them proceed in a separate, duplicative action.

9 The motion to sever should be denied.

10 **C. There Is No Reason to Appoint More Interim Lead Counsel.**

11 Finally, the Court should deny Prado's motion to appoint more interim lead counsel, which is not  
 12 necessary to protect the interests of the putative class and would only hinder efficiency.

13 A court may—but is not required to—“designate interim counsel to act on behalf of a putative  
 14 class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). The  
 15 court’s goal in appointing interim counsel is “achieving efficiency and economy without jeopardizing  
 16 fairness to the parties.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 58 (E.D.N.Y.  
 17 2006) (quoting Manual for Complex Litigation (Fourth) § 10.224 (2004)). Accordingly, interim counsel  
 18 should not be appointed unless it would make the litigation “more efficient, or perhaps, more significantly,  
 19 provide a benefit to the putative classes.” *Neal v. Wal-Mart Stores, Inc.*, 2019 WL 3407143, at \*4  
 20 (W.D.N.C. July 26, 2019). When appointment of co-lead counsel would “impede efficiency and  
 21 coordination,” it should be denied. *Stasi v. Inmediata Health Grp. Corp.*, 2021 WL 5861563, at \*2 (S.D.  
 22 Cal. Mar. 10, 2021); *see also In re Nest Labs Litig.*, 2014 WL 12878556, at \*2 (N.D. Cal. Aug. 18, 2014)  
 23 (declining to appoint co-lead interim class counsel because “greater efficiency and clarity can only be  
 24 realized if the Court appoints *one* firm as interim class counsel”) (emphasis in original); *Michelle v. Arctic  
 25 Zero, Inc.*, 2013 WL 791145, at \*4 (S.D. Cal. Mar. 1, 2013) (declining appointment of an executive  
 26 committee or liaison counsel, in part, because “there has been no showing that the interests of efficiency  
 27 and economy are best served” by the appointment).

1       The Court has already appointed two lawyers (Mr. Dann and Mr. Zimmerman), each from a  
 2 separate law firm, to serve as interim lead counsel in this case. ECF No. 27. On September 23, 2024,  
 3 after the Court had already appointed Mr. Dann and Mr. Zimmerman as interim lead counsel, yet another  
 4 lawyer, Mr. Timothy G. Blood, purported to enter an appearance on Plaintiffs' behalf, albeit without Court  
 5 permission. ECF No. 63. Now, Prado asks this Court to appoint three more lawyers, from two additional  
 6 firms, as interim counsel for a new putative class (*see Mot.*, generally), and the parties can reasonably  
 7 anticipate yet another set of lawyers (three firms have appeared in *Flores*) vying for a position in these  
 8 overlapping litigations. But appointing multiple co-lead counsel here is not necessary to protect the  
 9 interests of the putative class and would only hinder efficiency. Prado's proposal—having three lawyers  
 10 represent a separate class in a separate lawsuit seeking damages based on the same underlying conduct—  
 11 would entail duplicative discovery, duplicative motion practice, and duplicative class certification  
 12 proceedings. That is not efficiency. It is the opposite. Again, as this Court has observed, “greater  
 13 efficiency and clarity can only be realized if the Court appoints *one* firm as interim class counsel.” *In re*  
 14 *Nest Labs Litig.*, 2014 WL 12878556, at \*2 (emphasis in original); *see also Cadena v. Am. Honda Motor*  
 15 *Co.*, 2020 WL 3107798, at \*1 (C.D. Cal. June 9, 2020) (noting the inefficiencies that are likely to arise if  
 16 another firm were to serve as third co-lead counsel, especially where the parties have not agreed to do so);  
 17 *Haynie v. Cornell Univ.*, 2020 WL 6043947, at \*3 (N.D.N.Y. Oct. 13, 2020) (“appointment of a single  
 18 lead counsel best serves the interests of judicial economy while protecting the interests of the putative  
 19 class” because “the legal theories and claims are not so complex as to warrant a multi-firm counsel  
 20 structure”).

21       There is no reason to appoint additional interim counsel. Prado's motion should be denied.<sup>5</sup>

### 22       **III. CONCLUSION**

23       Consolidation—not intervention, severance, and appointment of additional interim counsel—is  
 24 the proper course here. Prado's motion should be denied.

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25       <sup>5</sup> Alternatively, Prado's proposal should be modified to avoid inefficiencies, duplication of effort,  
 26 misjudgments in staffing, and the like. For example, should the Court determine that co-lead counsel is  
 27 warranted, it should impose timekeeping and billing guidelines that require timekeepers to enter their time  
 28 by the last day of the month and finalization of bills within 14 days thereafter; billing in .10 increments;  
 prohibition of block billing; and limiting the fees that can be recovered (e.g., by prohibiting recovery of  
 fees for multiple attorneys attending a deposition).

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2 Dated: November 13, 2024  
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4 By: /s/ Shawn R. Obi  
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